

State of California
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
CLOSED SESSION AGENDA
Government Code § 11126 (a), (c)(3), and (e)
for
Wednesday, October 17, 2007
10:00 a.m.
Sacramento, California
&
West Covina, California

TO: Members of the California Occupational Safety and Health Appeals Board

FROM: J. Jeffrey Mojcher, Chief Counsel

DATE: October 5, 2007

RE: Closed Session of the Board on October 17, 2007

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), and (e) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1. CENTRAL CHEVROLET, 05-R1D4-2615 THROUGH 2618 (9/27/2007)
2. HARRY L. MURPHY INC., 06-R1D2-218 AND 219 (10/2/2007)
3. PANELIZED STRUCTURES, INC., 04-R4D4-2955 THROUGH 2957 (10/1/2007)
4. THE DAVEY TREE SURGERY COMPANY, 06-R1D5-767 AND 768 (9/27/2007)

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ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1. AJ'S JERKY FACTORY dba AJS JERKY FACTORY INC., 07-R6D2-2139 THROUGH 2142
2. AMS HEATING, INC., 07-R2D4-285 AND 286
3. ACME FILL CORPORATION, 07-R6D1-3372 THROUGH 3381
4. AIR GAS SPECIALTY PRODUCTS, 07-R3D7-3071 AND 3072
5. STEVEN ALIX, 07-R3D2-2710
6. ARROWHEAD REGIONAL MEDICAL CENTER, 06-R3D7-2487 AND 2488
7. ASPLUNDH TREE EXPERT CO., 06-R4D4-101 THROUGH 103
8. A-THRONE, 05-R3D5-3979
9. ATKINSON CONTRACTORS, INC., 05-R5D1-4314
10. BCI FRAMING & DRYWALL, 05-R3D1-2102 AND 2103
11. BUTTE CREEK BREWING CO., 05-R2D3-4197 AND 4198
12. CKL CONSTRUCTION, 05-R2D2-2784
13. CALIFORNIA DEPARTMENT OF TRANSPORTATION/CAL TRANS, 05-R1D5-3727 AND 3728
14. CALIFORNIA ERECTORS BAY AREA INC., 06-R2D1-802
15. CAZA DRILLING (CALIFORNIA), INC., 04-R4D1-4418 AND 4419
16. COASTAL ROOFING, 05-R6D2-2587 AND 2588
17. COAST SHEET METAL INC., 05-R6D2-3525 THROUGH 3529
18. COMMERCIAL LUMBER & PALLET, 06-R4D4-4297

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19. COMMUNITY HOSPICE INC. dba THE HOPE CHEST THRIFT, 07-R2D4-3201 AND 3202
20. CONCRETE CONSTRUCTION CORPORATION, 07-R3D1-3574
21. CONOCO PHILLIPS COMPANY, 06-R3D7-4374 THROUGH 4376
22. CONTAINER COMPONENTS, 07-R6D2-1475 THROUGH 1482
23. CONXTECH, INC., 06-R1D4-1509 AND 1510
24. DARNELL-ROSE, 07-R4D4-82 THROUGH 84
25. DIVERSE STAFFING SOLUTIONS, 07-R3D5-3064
26. DRISCOLL, INC., 07-R6D2-3272 (10/1/2007) 3277
27. DUCOING ENTERPRISES, INC., dba PERFECTION PAINTING, 07-R2D4-150 AND 151
28. EASTERN ELECTRIC COMPANY, 06-R3D5-63
29. FAITH FARMING, 05-R4D3-3362
30. FLOYD JOHNSTON CONSTRUCTION, INC., 07-R2D4-284
31. GENERAL AG LABOR SERVICES, INC., 06-R2D5-790
32. GERAWAN FARMS, 06-R2D5-479
33. GIDDENS BROTHERS, INC., 06-R2D1-1759
34. GOURMET VEG-PAQ, INC., 07-R3D2-1165 THROUGH 1167
35. GRANITE CONSTRUCTION CO., 07-R5D1-1082, 07-R5D1-1085
36. GRANITE CONSTRUCTION COMPANY INC., 05-R5D1-4470
37. GRAPHIC PRESS, 05-R4D2-126 THROUGH 128
38. SERGIO GUZMAN dba GUZMAN BROTHERS TRANSPORTATION, 07-R1D1-1895
39. HANSON AGGREGATES WEST, 07-R5D2-3082

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40. HOLCOMB ENGINEERING CONTRACTORS, INC., 06-R4D1-3202 THROUGH 3206
41. HOUSING AUTHORITY, CITY OF LOS ANGELES, 07-R4D1-2731
42. INTERNATIONAL MEDICATION SYSTEMS, LIMITED, 07-R4D4-3153 THROUGH 3155
43. JAM CONSTRUCTION, 06-R2D5-791 AND 792
44. JENNY CRAIG, 07-R3D5-1191
45. JONES CONSTRUCTION, 05-R3D3-3751 AND 3752
46. KAISER ALUMINUM, 05-R4D2-3184
47. KENYON PLASTERING, INC., 04-R4D3-3855
48. L.A. SANI-FELT COMPANY, 07-R4D2-1449 THROUGH 1451
49. L.V. HOLDERBY, JR. ENGINEERING CONTRACTOR, 06-R3D2-3646 THROUGH 3650
50. LABORATORY CORPORATION OF AMERICA, A DELAWARE CORPORATION dba LABCORP, 06-R1D3-2654 THROUGH 2656
51. LEE KUM KEE (USA) FOODS, INC., 07-R6D2-896 THROUGH 900
52. LEE KUM KEE (USA) FOODS, INC., 07-R6D2-901 THROUGH 903
53. LEINER HEALTH PRODUCTS, 06-R3D5-65
54. ARMANDO M. LOPEZ, 07-R2D4-282
55. LOPEZ CANYON LANDFILL, 07-R6D2-3187 THROUGH 3189
56. MG CONSTRUCTION, 07-R2D1-271
57. MARIE CALLENDER'S, 07-R2D1-3021
58. MARIN MUNICIPAL WATER DISTRICT, 07-R1D5-3233 THROUGH 3236
59. MATT CONSTRUCTION, 06-R4D1-3667
60. MICHAEL PATTI PAINTING, 07-R3D2-2835 AND 2836

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61. MIMO & COM dba TONY TRIM, 06-R4D1-1865 THROUGH 1871
62. MONTEZUMA ELEMENTARY SCHOOL, 07-R2D4-1379
63. NBTY MANUFACTURING, 07-R3D1-2709
64. NATIONAL RETAIL TRANSPORTATION, INC., 05-R4D2-1355 AND 1356
65. NEW ALBERTSON'S INC., 07-R4D2-922
66. PANATTONI CONSTRUCTION, INC., 06-R2D1-2697 AND 2698
67. PAUL RHODES CONSTRUCTION, 07-R4D3-533 THROUGH 536
68. PENHALL, 05-R3D5-3981 AND 3982
69. PREMIER CABINET, INC. dba SURFACE TECHNOLOGY CORPORATION, 05-R6D2-2872 THROUGH 2876
70. QUALITY FOAM PACKAGING, 05-R3D3-4121 THROUGH 4123
71. RGW CORPORATION, INC., 07-R1D4-267
72. RACKLEY CO., INC., 07-R3D3-138
73. RADEX DISTRIBUTION, 06-R4D2-3932 AND 3933
74. REED ELECTRIC AND FIELD SERVICE, 07-R4D2-968 THROUGH 970
75. RENTERIA VINEYARD MANAGEMENT, INC., 06-R1D5-3863 AND 3864
76. RIVERA CONCRETE, 07-R2D3-910
77. ROSCOE MOSS COMPANY, 04-R4D2-4578 THROUGH 4585
78. SANTA FE AGGREGATES, INC., 07-R5D1-543
79. SATCO INC., 05-R4D1-2697 THROUGH 2702
80. SHORELINE BUILDERS, 07-R2D4-643
81. SHORELINE BUILDERS, 07-R2D4-644
82. SIPCO SURFACE PROTECTION, INC., 07-R6D2-2660
83. SONDAD IRONWORKS, 07-R2D1-1520

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84. SPRIG ELECTRIC, INC., 05-R1D4-1236 AND 1237
85. STAFF RESOURCES, INC., 04-R2D1-4513 THROUGH 4515
86. SUPERIOR CONSTRUCTION, 05-R3D1-1909
87. SUPERIOR COURT OF CALIFORNIA dba MANTECA SUPERIOR COURT, 07-R2D4-283
88. SWIFT & COMPANY, 06-R4D4-975 AND 976
89. SYNEX CORPORATION, 05-R1D4-3254 AND 3255
90. TCB INDUSTRIAL, INC., 05-R5D1-2016 AND 2017
91. THE JEWEL DATE COMPANY INC., 06-R3D3-945 AND 946
92. THE OLSON COMPANY, 06-R3D5-2293
93. THE RATTO GROUP COMPANIES dba SOLID WASTE SYSTEMS, 07-R6D1-432 THROUGH 435
94. 3-D CONSTRUCTION, 06-R2D3-4467
95. TOM HILL CONSTRUCTION CO., INC., 06-R2D3-3640 AND 3641
96. TRANSPACIFIC CONTAINER CORP., 05-R6D2-2270 AND 2271
97. VACAVILLE SANITARY SERVICE, 07-R6D1-3382 THROUGH 3384
98. VALLEY FARM TRANSPORT, 06-R2D3-4464
99. VALLEY PRIDE INC., 05-R6D2-2568 AND 2569
100. VALLEY TOXICOLOGY SERVICE, INC., 07-R2D1-3103
101. ZOCALO RESTAURANT, 06-R1D2-4462

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ORDERS DISMISSING APPEALS:

(Written order issued by an Administrative Law Judge disposing of an Employer appeal.)

1. AMERICAN CEMENT, INC., 06-R2D5-1061 AND 1062
2. GALVAN BROTHERS, INC., 05-R6D2-1850
3. GILL LAND COMPANY, 05-R2D5-978 THROUGH 980
4. RUSS JENKINS CONSTRUCTION, 04-R2D5-4278

PETITIONS FOR RECONSIDERATION:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1. BRUTOCO ENGINEERING & CONSTRUCTION, INC., 07-R3D1-9223
2. LUBY'S CHINESE RESTAURANT, 06-R2D5-0037
3. MURRAY COMPANY, 07-R4D2-9190 THROUGH 9192
4. UKIAH FORD-LINCOLN-MERCURY, INC., 06-R1D5-2556 AND 2557

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

1. CARTER PUMP & MACHINE, INC., 07-R4D3-9255
2. K.D. STEEL, 05-R1D4-2479 THROUGH 2482
3. LAKEVIEW BUILDERS, INC., 05-R4D3-1997 AND 1998
4. SOUTHLAND CONSTRUCTION, 05-R3D2-215 THROUGH 217
5. SPLASH & DASH CARWASH, 07-R2D1-9183

DECISIONS AFTER RECONSIDERATION (DRAFTS):

(If the Appeals Board grants a petition for reconsideration it reviews the facts of the appeal and then issues a decision after reconsideration upholding, reversing or modifying the underlying ALJ decision.)

1. AC FRAMERS INC., 03-R2D3-3475

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2. A & C LANDSCAPING, INC., aka A & C CONSTRUCTION, INC., 03-R4D4-4791
3. AGC COMMUNICATIONS, INC., 03-R1D4-3121
4. AMERIPRIDE UNIFORM 04-R4D2-106 AND 107
5. A. TEICHERT & SON, INC., A CORPORATION dba TEICHERT AGGREGATES, 04-R5D2-850 AND 851
6. BART, 03-R1D1-5170
7. BAY AREA SYSTEMS & SOLUTIONS, dba BASS ELECTRIC, 01-R1D3-106
8. BIMBO BAKERIES USA, 03-R1D3-5215 THROUGH 5217
9. BLF, INC., dba LARRUBURE FRAMING, 02-R4D1-4675 THROUGH 4680
10. BLF, INC., dba LARRABURE FRAMING, 03-R4D3-4428 AND 4429
11. BLUE DIAMOND MATERIALS, 02-R5D2-1268
12. BRYDENSOT METAL PRODUCTS, 03-R3D3-3554 AND 3555
13. CALDWELL-ROLAND ROOFING, INC., 03-R1D4-2905
14. CALIFORNIA FAMILY FITNESS, 03-R2D1-095 & 096
15. CALIFORNIA FRESH FARMS LLC., 06-R2D4-4127 AND 4224
16. CENTRAL VALLEY CONTRACTING, 05-R4D3-2351
17. COX COMMUNICATIONS, 03-R3D2-1942
18. DADE BEHRING, 05-R2D1-2203
19. DAVIS BROTHERS FRAMING, INC., 03-R3D1-0114
20. DAVIS BROTHERS FRAMING, INC., 05-R3D3-634 THROUGH 636
21. DAVIS ROOFING, INC., 05-R3D3-4127
22. DYNALECTRIC, 03-R1D1-4101
23. E. L. YEAGER CONSTRUCTION COMPANY, INC., 01-R5D3-3261
24. ETTER & SON CONSTRUCTION, INC., 03-R1D5-3131

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25. GHILOTTI BROS. CONTRACTORS, 04-R1D5-2321 AND 2322
26. GLASS PAK, 03-R2D2-0750 AND 0751
27. HEARN CONSTRUCTION, INC., 02-R6D1-3533 THROUGH 3536
28. HELPMATES STAFFING SERVICES, 05-R3D3-2239
29. HEMMINGSEN CONSTRUCTION CO., INC., 07-R2D3-9277
30. HUSSMAN CORPORATION, 03-R3D1-2939
31. ILH CONSTRUCTION, 02-R1D1-4172
32. J. F. SHEA CONSTRUCTION, INC., 02-R5D3-801
33. JOHN LAING HOMES, 04-R3D1-194 AND 195
34. KELLY SERVICES, INC., 06-R1D2-1024
35. KENNY-SHEA-TRAYLOR-FRONTIER/KEMPER, JV, 03-R5D2-0323
36. KIMES-MORRIS CONSTRUCTION, 02-R1D4-1204 THROUGH 1209 & 02-1273
37. LONG BEACH CITY COLLEGE, 03-R3D5-2747
38. LOS ANGELES, CITY OF, FIRE DEPARTMENT, 03-R2D5-3960
39. MCI WORLDCOM INC., 00-R1D1-440 THROUGH 442
40. NIBBLELINK MASONRY CONSTRUCTION, 02-R3D3-1399 THROUGH 1401
41. O & M INDUSTRIES, 04-R1D5-1597
42. PMR RACE CARS, 03-R3D3-1825
43. POUK & STEINLE, INC., 03-R4D2-1495 & 1496
44. RII PLASTERING INC., 02-R3D1-2679

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45. SACRAMENTO MUNICIPAL UTILITY DISTRICT, 02-R2D1-1654 THROUGH 1656
46. SANTA ROSA CITY TRANSIT AND PARKING DEPARTMENT, 05-R1D5-1417
47. STACY & WITBECK INC., 05-R1D1-1142
48. STRUCTURAL SHOTCRETE SYSTEM, 03-R4D3-986
49. SUN VALLEY SKYLIGHTS, INC., 03-R4D1-2613 & 2614
50. TEICHERT AGGREGATES, 04-R5D1-2982
51. TOAD IN THE HOLE TAVERN & GRILL, INC., dba BRITTANY'S CAFÉ, 05-R3D3-2533 AND 2534
52. TRI-COUNTY, INC., 04-R1D5-3927
53. TRIO METAL, 03-R4D4-0317
54. UKIAH FORD-LINCOLN-MERCURY, INC. 06-R1D5-2556 AND 2557
55. WESTCOAST COMMUNICATION, 05-R2D3-2801 AND 2802
56. WESTERN DOOR, 01-R3D1-2827
57. WEST VALLEY CONSTRUCTION COMPANY, INC., 01-R1D2-3017 & 3018

PENDING LITIGATION

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. HFS INVESTMENTS, INC., 01CS00981 (96-3079)
2. DESILVA GATES CONSTRUCTION, 05CS00008 (01-2742)

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3. UNITED ASSOCIATION LOCAL UNION 246, AFL-CIO; IDEPSCA INSTITUTO DE EDUCACION POPULAR DEL SUR DE CALIFORNIA AND CENTRO LEGAL DE LA RAZA, (HARRIS CONSTRUCTION COMPANY, INC.), 07CS00518 (02-3914)
4. INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, LOCAL LODGE 1781; JULIA SMITH, (UNITED AIRLINES dba UNITED AIRLINES SFO SYC), 07CS00331 (00- 2844)
5. WESTERN MILLING, LLC, 06 CE CG 04007 (06- 9039/9040)
6. IRBY CONSTRUCTION COMPANY, ECU03759 (03-2728)
7. JERLANE v DIVISION OF OCCUPATIONAL SAFETY & HEALTH, 37-2007-0005631-CU-WM-NC, 01-R3D2-4344-4348

PERSONNEL *(Issues regarding staff.)*

Any matter not completed at this Closed Session may be continued to subsequent meetings.